

**TITLE 760 DEPARTMENT OF INSURANCE****Economic Impact Statement**

LSA Document #18-70

**IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses**

IC 4-22-2.1-5(a) provides that an agency that intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses must prepare a statement that describes the annual economic impact of the rule on small businesses after the rule is fully implemented as described in IC 4-22-2.1-5(b). That statement must be submitted to the Small Business Ombudsman at the Indiana Economic Development Corporation. The Small Business Ombudsman is required to review the rule and submit written comments to the agency not later than seven days before the public hearing.

The Indiana Department of Insurance (IDOI) is amending 760 IAC 1-60 to make classifying physicians more objective and decrease the number of variances among insurers. Part of what is required for a physician to participate in the Indiana Patient's Compensation Fund (PCF) is to pay surcharge under 760 IAC 1-60 based on the individual's specialty. Insurance companies have been classifying physicians performing certain procedures in different PCF specialty class codes. This disparity has created an unfair marketplace. The proposed amendments will correct this situation.

The proposed amendments also update the physician specialty classes. These changes reclassify several specialties into new classes that reflect changes in the primary professional liability insurance market. For example, the proposed amendments move 80266 Pathology – No Surgery from Class 0 to Class 1 and move 80233 Occupational Medicine from Class 1 to Class 0. The proposed amendments also add new specialty class codes.

Finally, the proposed amendments provide instruction for surcharge payments for physicians working on a part-time basis and for those holding more than one professional liability policy. The amendments clarify the amount of surcharge owed for physicians practicing part-time. The amendments also provide that physicians holding more than one professional liability policy need not pay multiple full-time annual surcharges to the PCF; instead, physicians will only pay a portion of the second policy. These amendments will only affect those health care providers choosing to participate in the PCF, as participation is voluntary and not mandatory.

**Estimated Number of Small Businesses Affected:**

From August 10, 2016, to August 10, 2017, there were 2,156 physicians participating in one of the PCF specialty class codes which will be reclassified by these amendments. The proposed rule will also impact insurance companies; risk retention groups; and surplus lines producers who remit surcharge on behalf of authorized surplus lines carriers; required to remit surcharge to the PCF on behalf of health care providers. As of July 18, 2017, there were 95 insurance companies and 24 risk retention groups which remitted surcharge to the PCF. There are approximately 139 resident surplus lines producers, and approximately 3,000 non-resident surplus lines producers. It is unknown how many of these health care providers or other entities meet the definition of "small business" under IC 5-28-2-6.

**Estimated Administrative Costs Imposed on Small Businesses:**

Insurers, risk retention groups, and surplus lines producers remitting surcharge on behalf of health care providers electing to participate in the PCF will incur certain administrative costs. Insurers, risk retention groups, and surplus lines producers are required to collect surcharge on the same basis as premiums and remit the surcharge to the PCF. Insurers, risk retention groups, and surplus lines producers will need to update systems to reflect the reduced surcharge rates. The cost to update systems is expected to be minimal.

**Estimated Total Annual Economic Impact on Small Businesses:**

The estimated total economic impact on small businesses is difficult to quantify. Physicians will receive the following increased or decreased PCF surcharge:

Specialty Class	Number of Providers	Total surcharge (current)	Total surcharge (proposed)	Increase/Decrease
Pathology – No surgery	325	\$728,000.00	\$970,450.00	\$242,450.00
Occupational Medicine	107	\$319,502.00	\$239,680.00	(\$79,822.00)
Neurology (Incl. Child) – No Surgery	293	\$874,898.00	\$1,224,740.00	\$349,842.00
Gynecology – Minor Surgery	26	\$139,750.00	\$174,694.00	\$34,944.00
Surgery – Anesthesiology	1,153	\$7,747,007.00	\$6,197,375.00	(\$1,549,632.00)
Radiation Therapy	5	\$33,595.00	\$26,875.00	(\$6,720.00)
Physicians – Surgery – Nephrology	2	\$17,916.00	\$13,438.00	(\$4,478.00)

Surgery – Cardiac	21	\$282,807.00	\$438,942.00	\$156,135.00
Surgery – Plastic –Otorhinolaryngology	33	\$443,421.00	\$295,614.00	(\$147,807.00)
Surgery – Gynecology	91	\$1,222,767.00	\$1,902,082.00	\$679,315.00
Surgery – Neurology (Incl. Child)	100	\$2,538,100.00	\$2,538,100.00	\$0.00 <sup>1</sup>

Based upon the above chart, the IDOI estimates an overall reduction in physician surcharge of \$325,773. The proposed amendments providing instruction for surcharge payments for physicians working on a part-time basis is a clarification and will not impose costs on physicians. The amendments related to physicians holding more than one professional liability policy formalize the current practices of the PCF, so there is no additional cost to physicians.

#### **Justification of Requirements or Costs:**

These requirements and costs are necessary. Insurers will benefit from the proposed amendments because there will be greater consistency in the classification of physicians, leading to a level playing field in the marketplace. [IC 34-18-5-2](#) requires the surcharge paid to the PCF to be actuarially appropriate. Milliman, Inc., the PCF's actuarial firm, issued a report to the PCF with respect to changes to the physician specialty classes. Based on this report, the IDOI determined that amendments to [760 IAC 1-60](#) are necessary.

#### **Regulatory Flexibility Analysis:**

There are no less intrusive or less costly alternative methods for achieving the purposes of the proposed rule. Surcharge adjustments and costs associated with system changes should be design standards, which are expressed requirements in terms of specific means that must be satisfied without choice or discretion. Because Milliman, Inc. has determined the surcharge rates based solely on the risk a health care provider brings to the PCF, the IDOI has determined that uniform application of the proposed rule is the most beneficial for the PCF and health care providers.

<sup>1</sup> Rates for newly created Class 9 have not yet been developed. Surgery – Neurology (Incl. Child) physicians will continue to pay Class 8 surcharge until the new rates are published via IDOI bulletin.

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